

Amend Revenue and Taxation Code Section 6225 of the Sales and Use Tax Law to increase the gross receipts threshold for qualified purchasers to \$500,000 annually, and allow qualified purchasers meeting or exceeding this new threshold to use a “look-up” table to satisfy their tax liabilities.

Source: Honorable George Runner

Existing Law. During 2009’s Fourth Extraordinary Session, ABx4 18 (Ch. 16, in effect July 28, 2009) was enacted into law to impose a use tax registration and reporting obligation on larger businesses. Under these provisions, businesses (except for those already registered to report sales or use tax) that have annual gross receipts from business operations of at least \$100,000 annually, are required to register with the BOE and file an annual use tax return on or before April 15th and report their purchases subject to use tax that were made during the previous calendar year.

This Proposal. This proposal would increase the gross receipts threshold for these businesses to \$500,000 annually, and allow qualified purchasers meeting or exceeding this new threshold to use a “look-up” table to satisfy their tax liabilities.

Background. Since its enactment, the BOE has registered over 500,000 businesses and has received over \$82 million in use tax, interest, and penalty (about \$74 million is tax) from these businesses for reporting periods 2007, 2008, 2009, and 2010. However, over half of these businesses that have filed use tax returns under this provision have reported no use tax liability. (At its July 27, 2011 Meeting the Members of the BOE unanimously approved the staff’s recommendation to remove from the program, those qualified purchasers that have filed returns with zero use tax liability for three years in succession. Staff is currently in the process of removing those purchasers from the program).

This program was intended to address the over \$1 billion use tax gap – which, at the time, was primarily a result of unreported use tax on business-to-business transactions. However, revenues derived from the program have fallen considerably short of the anticipated amounts. When the bill was pending before the Legislature, staff had estimated that for the first year, \$81 million in use tax revenue would be generated for the fiscal year 2009-10, \$183 million for 2010-11, and up to \$651 million for 2013-14. With only a \$74 million use tax gain over a four-year period, it is apparent that the projected revenues will not be realized.

In addition to this revenue shortfall, this program has resulted in significant confusion by business owners who had no previous relationship with the BOE, significant BOE costs to implement and administer, and a significant burden on taxpayers. By reducing the number of taxpayers to be registered (with a \$500,000 gross receipts threshold, the population of taxpayers required to be registered would decrease by over 176,000, with a decrease in only about 18%¹ in revenues), and adding a look-up table for those required to remain in the program, compliance with the program could be enhanced, and the burden on the BOE staff and businesses would be greatly minimized. BOE staff could then focus its enforcement efforts in more productive ways.

¹ Staff is currently verifying the accuracy of this percentage

Section 6225 of the Revenue and Taxation Code is amended to read:

6225. (a) In order to facilitate the collection of use tax imposed by this part, a qualified purchaser shall register with the board on a form prescribed by the board and shall set forth the name under which the qualified purchaser transacts or intends to transact business, the location of the qualified purchaser's place or places of business, and other information as the board may require.

(b) Article 1 (commencing with Section 6451) of Chapter 5 of this part shall apply to a qualified purchaser, except that a return showing the total sales price of the tangible personal property purchased by the qualified purchaser, the storage, use, or other consumption of which became subject to the use tax during the preceding calendar year, and which was not paid to a retailer required to collect the tax or which was not paid to a retailer the qualified purchaser reasonably believed was required to collect the tax, shall be filed, together with a remittance of the amount of the tax due, with the board on or before April 15.

(c) As an alternative to filing a return described in subdivision (b), a qualified purchaser may satisfy his or her use tax liability for the preceding calendar year by remitting to the board on or before April 15 the estimated amount of use tax as calculated by the board.

~~(e)~~ (d) A "qualified purchaser" means a person that meets all of the following conditions:

(1) The person is not required to hold a seller's permit pursuant to this part.
(2) The person is not required to be registered pursuant to Section 6226.
(3) The person is not a holder of a use tax direct payment permit as described in Section 7051.3.

(4) The person receives at least ~~one~~ five hundred thousand dollars ~~(\$100,000)~~ (\$500,000) in gross receipts from business operations per calendar year.

(5) The person is not otherwise registered with the board to report use tax.

~~(d)~~ (e) This section shall not apply to the purchase of a vehicle, vessel, or aircraft as defined in Article 1 (commencing with Section 6271) of Chapter 3.5 of this part.

(f) The board shall annually calculate the estimated amount of use tax due according to a person's gross receipts from business operations and make available to qualified purchasers such amounts in the form of a use tax table as part of the instructions provided to qualified purchasers.

(g) When a person uses the table specified in (f) in accordance with the instructions provided by the board, the board shall be precluded from making any determination against that person for an underpayment of use tax.